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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2658/2015*, **

Communication submitted by:	Gyan Devi Bolakhe (represented by counsels, Mandira Sharma, of Advocacy Forum Nepal, and Sarah Fulton, of REDRESS)
Alleged victims:	The author, Hari Prasad Bolakhe (the author's deceased husband), Sajana Bolakhe, Kalasha Bolakhe, Barsha Bolakhe and Santosh Bolakhe (their children), Pushpa Prasad Bolakhe and Lila Kumara Bolakhe (the author's parents-in-law)
State party:	Nepal
Date of communication:	14 November 2014 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 22 October 2015 (not issued in document form)
Date of adoption of Views:	19 July 2018
Subject matters:	Enforced disappearance; right to life
Procedural issue:	Exhaustion of domestic remedies
Substantive issues:	Right to life; prohibition of torture or cruel and inhuman treatment; right to liberty and security of person; respect for the inherent dignity of the human person; recognition as a person before the law; right to an effective remedy
Articles of the Covenant:	6, 7, 9, 10, 16 and 17, alone and read in conjunction with 2 (3)
Articles of the Optional Protocol:	2 and 5 (2) (b)

* Adopted by the Committee at its 123rd session (2–27 July 2018).

** The following members of the Committee participated in the examination of the present communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

GE.18-14572(E)

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1. The author of the communication is Gyan Devi Bolakhe, a national of Nepal born in 1973. She submits the communication on behalf of herself, her deceased husband (Hari Prasad Bolakhe), their four children (Sajana, Kalasha, Barsha and Santosh Bolakhe), as well as her parents-in-law (Pushpa Prasad Bolakhe and Lila Kumara Bolakhe). Mr. Bolakhe was a national of Nepal born in 1969. The author claims that the State party has violated the rights of her husband under articles 6, 7, 9, 10, 16 and 17 read alone and in conjunction with article 2 (3) of the Covenant, and her rights and the rights of her children and parents-in-law under article 7 alone and in conjunction with 2 (3) of the Covenant. The author is represented by counsels. The Optional Protocol entered into force for Nepal on 14 August 1991.

The facts as submitted by the author

The conflict

2.1 Between 1996 and 2006, Nepal was immersed in an internal armed conflict between the Government of Nepal and the Communist Party of Nepal (Maoist). A state of emergency was declared from 28 November 2001 until 20 August 2002. Wide powers were given to security officers by the terrorist and disruptive activities ordinances and the Terrorist and Disruptive Activities Act (2002), including the right to arrest persons believed to be involved in what were termed "terrorist activities", which led to a steep increase in violations committed by the Royal Nepalese Army. During the conflict, widespread human rights violations, including arbitrary arrest and detention, torture, rape and enforced disappearances were documented.[1] Unlawful killings and extrajudicial executions by law enforcement officers and unlawful killings by Maoists were a constant feature of the conflict.[2] One of the patterns of extrajudicial executions by security forces was to launch search operations in villages, take into custody a number of local people, interrogate and beat them, then take them to a secluded place and shoot them. Killings were often justified as an unavoidable consequence of crossfire and labelled "encounter killings".[3]

First arrest and enforced disappearance

2.2 Mr. Bolakhe was a Christian pastor of the Seventh-day Adventist Church located at Gatthaghar, Bhaktapur District. He resided there but frequently visited his family, who lived in Fulbari Village, Kavrepalanchowk (Kavre) District. The family had a public telephone booth at their home, which had sometimes been used by Maoists.

2.3 On 1 May 2001, Mr. Bolakhe was arrested by a joint security forces unit, including the Army, on allegations of involvement with Maoist activities and allowing Maoists to use the telephone. At the time of his arrest, he was not formally informed of the charges against him and was not allowed to consult a lawyer. His family was able to establish his whereabouts only 14 months later, when he was transferred to Dhulikhel prison on 14 July 2002. Mr. Bolakhe was held in different army barracks before being released on 20 April 2003. He was released after his father had signed a paper stating that his son would not commit any illegal acts, and on the condition of reporting regularly to the Kavre District Police Office.

Interrogation and arrest and torture of the elder brother

2.4 In November 2003, Mr. Bolakhe was again called by Army officials at the Bhakundebesi barracks for interrogation after a bomb targeting the Army went off near his

[1] The author refers to Amnesty International, *Nepal: A Spiralling Human Rights Crisis* (London, April 2002) and "Nepal: a deepening human rights crisis" (London, 19 December 2002); Human Rights Watch, *Between a Rock and a Hard Place: Civilian Struggle to Survive in Nepal's Civil War* (6 October 2004); and Office of the United Nations High Commissioner for Human Rights (OHCHR), *Nepal Conflict Report 2012* (Geneva, October 2012).

[2] In this context, the author refers to Amnesty International, "Nepal: Killing with Impunity", (2005), p. 3, https://www.amnesty.org/en/documents/asa31/001/2005/en/.

[3] The author refers to Amnesty International, "Nepal: killing with impunity" (London, 20 June 2005) and OHCHR-Nepal, "Investigating allegations of extra-judicial killings in the Terai: OHCHR-Nepal summary of concerns" (Kathmandu, July 2010).

house. The Army then arrested two other men from the same village on suspicion of involvement in planting the bomb. Mr. Bolakhe was in Bhaktapur at the time.

2.5 Some days after, the Army arrested his elder brother, who was found in possession of a note from the Maoists. He was tortured and ill-treated, and repeatedly asked whether Mr. Bolakhe had connections to the Maoists. He was released after his father had signed a document committing to help capture a Maoist commander.

House search, interrogation and threats

2.6 On 20 December 2003, Army personnel from the Bhakundebesi barracks came to Mr. Bolakhe's house and searched the entire premises.[4] At the time, Mr. Bolakhe was in Gatthaghar but the author and her four children were at the house. The Army scolded them and asked about Mr. Bolakhe's whereabouts. The Army personnel said that he was a Maoist and that they had come to arrest him, and asked her to send him to the barracks upon his return. On 21 December 2003, the author went to meet her husband and told him about the Army's visit. On 23 December 2003, Mr. Bolakhe went to Bhakundebesi barracks where he was interrogated and threatened with death before he was released.

Second arrest and enforced disappearance

2.7 On 27 December 2003, Mr. Bolakhe travelled by bus from Bhaktapur to Banepa for some church-related activities. While he was getting off the bus in Banepa, the Head Constable of Kavre District Police Office, in plain clothes, approached him, hugged him and said that the Deputy Superintendent of Police wanted to see him and took him away. Mr. Bolakhe's father, who was waiting at the bus station, and two shopkeepers located nearby witnessed the arrest. Immediately afterwards, the father went to Kavre District Police Office looking for his son but the arrest was denied. On the same day, the father, accompanied by the author, went to Satrumardan Army barracks in Dhulikhel (Dhulikhel barracks) looking for Mr. Bolakhe. They were severely reprimanded by the Army who denied having made such an arrest. One Army personnel member on duty told them that the previous night a man had been brought to the barracks. Based on his physical description, the author believed her husband was in Dhulikhel barracks. When the father visited the barracks again, he saw his son from afar. After that he made frequent visits, but was never given access to his son.

2.8 On 28 December 2003, Mr. Bolakhe's sister received a telephone call from someone pretending to be a friend of Mr. Bolakhe, saying that her brother was at one of his friend's home. The telephone call was made from the District Forest Office, where the Army was stationed. A few days later, an Army officer from Dhulikhel barracks approached the sister and said that he had made that telephone call, and asked for money for her brother for tobacco. On a different occasion, an Army sergeant told the sister that her brother was in Dhulikhel barracks.

Detention at the Gorakhnath Battalion Army camp

2.9 Based on testimony by a former detainee, R.P., the author's husband was transferred at some point to the Gorakhnath Battalion Army camp in Panauti. R.P. testified that he had first met Mr. Bolakhe in a detention room on 13 February 2004, before he went with him on a search mission.

2.10 R.P. also testified that he had previously been held in detention at that Army camp for three weeks in December 2003. During his time in detention, he had stayed blindfolded in a trench with poor conditions of hygiene, having to sleep on the floor without being given proper food or water. The detainees ate fruit and vegetable peelings, and had a dirty toilet and a tap that was dry most of the time. The Army used to call the detainees for interrogation and severely beat them with blunt objects, punching and kicking them all over their bodies. Although Mr. Bolakhe was transferred to the camp at a later stage, there was no reason to suggest that the conditions at the camp had changed. While on patrol, Mr. Bolakhe told R.P. that during his detention at the camp he had been frequently interrogated

[4] According to the complaint submitted by the author, there was no search warrant.

and beaten, and that it was painful for him to walk because of his injuries. Mr. Bolakhe was held incommunicado both in Dhulikhel barracks and in Gorakhnath Battalion Army camp.

Search operation and subsequent killing

2.11 On 13 February 2004, Mr. Bolakhe, along with R.P. and a Maoist suspect, were taken on a search mission led by B.T. They were accompanied by 45 soldiers and 3 police officers. During the mission, Mr. Bolakhe was ordered to carry weaponry and baggage for the Army officers. The Army went through a number of villages, and beat and arrested villagers for providing food to the Maoists. While advancing, a bomb explosion was heard. Some soldiers rushed back and found a bomb. They brought it back and gave it to one of the detainees to explode it.

2.12 By the time they had reached the village of Salleri, Mr. Bolakhe was separated from the other two detainees by about 150 metres. In his testimony, R.P. noted that he had overheard soldiers saying that B.T. had abused alcohol, and that they were scared of what he was going to do next. After a while, B.T. walked over to where Mr. Bolakhe was kept, and a few minutes later some shots were heard. R.P. testified that the shots had come from the same direction and had sounded like they had come from the same guns. B.T. and the soldiers, who had been with Mr. Bolakhe, came back without him.

2.13 The next morning, on 17 February 2004, soldiers went to the house of a villager, T.T., in Salleri and asked for digging instruments. Terrified by the shooting she had heard the previous night, she gave them a mattock and a shovel without asking any questions. The soldiers brought the instruments back an hour later. That morning, the soldiers and the two remaining detainees left the area. On the way back, some soldiers told R.P. that Mr. Bolakhe was a Maoist and got killed during the crossfire with Maoists who had come to rescue him.

2.14 Sometime later, a sister of T.T. showed her a location in the jungle with a terrible stench and flies hovering around. They suspected that a corpse had been buried there. Two years later, this was confirmed when human remains were exhumed from the same location. Those remains were confirmed to be those of Mr. Bolakhe.

Attempts to seek justice — writ petition for habeas corpus

2.15 Unaware of those events, the author and her family continued visiting Dhulikhel barracks. On 30 March 2004, the author submitted an application requesting her husband's release, which was met with reprimands.

2.16 On 11 October 2004, the Government of Nepal made public the whereabouts of 126 involuntarily disappeared persons through a report known as the Malego Committee's report.[5] The report contained Mr. Bolakhe's name, stating that he had been released on 20 April 2003, without any reference to his second arrest on 27 December 2003. Mr. Bolakhe's brother tried to establish his whereabouts in various locations, including Sundarijal barracks, [6] Central prison, Nakkhu prison, Dillibazar prison, the District Administration Office in Dhulikhel and the Dhulikhel barracks, but to no avail.

2.17 On 11 April 2005, following repeated refusals by the Army to provide information about the fate or whereabouts of Mr. Bolakhe, the family filed a habeas corpus writ petition with the Supreme Court. On 22 June 2005, the Court quashed the writ petition after the Ministry of Home Affairs presented the Malego Committee's report indicating Mr. Bolakhe's release.

Petition before the National Human Rights Commission, exhumation of the body and opinion of the Commission

2.18 On 16 July 2005, the family lodged a complaint before the National Human Rights Commission, which initially sought information from the Ministries of Defence and Home

[5] The Committee was convened under the Joint-Secretary of the Ministry of Home Affairs.

[6] The author refers to this location as Sundarijal prison.

Affairs, which said that no records of the arrest of Mr. Bolakhe on 27 December 2003 had been found.

2.19 The Commission continued with its investigation. It identified the possible burial site. On 5 July 2006, human remains were exhumed in a forest at Mulkhola, Kavre. The findings of the forensic autopsy confirmed that the remains were those of Mr. Bolakhe. It also concluded that he had died due to gunfire injuries in the pelvis: an "SG (grain) size lead pellets of 12 bore shotgun cartridge and a wad (plastic cup) of 12 bore shotgun carriage".[7] On 13 September 2006, the family received the body for cremation.

2.20 The Commission sought information from B.T., who said that he had led the patrol, and that the two other detainees had been on the patrol, but that he did not know anything about Mr. Bolakhe's arrest and death. He also said that there had been no crossfire incident at that time. The Commission also interviewed the Police Head Constable, K.B.L., who said that Mr. Bolakhe had not been arrested, otherwise there would have been an arrest warrant.

2.21 On 6 June 2008, the Commission adopted a decision in the case.[8] It concluded that Mr. Bolakhe had been arrested on 27 December 2003 and detained incommunicado at Dhulikhel barracks, before being transferred to the barracks in Panauti in February 2004. The Commission found that he had been taken on a search mission and unlawfully killed and buried in the jungle on 16 February 2004. It also found that the security forces had not followed the prescribed legal processes for the death of a person in their custody, and concealed the incident, making the whereabouts of the person unknown. The Commission found K.B.L. responsible for the "illegal arrest" of Mr. Bolakhe; K.T. responsible for illegally detaining him incommunicado; and B.T. responsible for "taking a civilian on an Army mission and killing him". The Commission stated that it was necessary to create personal accountability for those involved, and recommended that the Government provide the author's family with compensation amounting to 300,000 Nepalese rupees (Nrs).[9]

Further steps taken by the author and her family

2.22 The Government never formally acknowledged the decision of the Commission nor implemented its recommendations. In the absence of transitional justice mechanisms as envisaged in the Interim Constitution of Nepal, the Government provided the Bolakhe family with an "interim measure" in the form of a payment amounting to Nrs 325,000[10] under the Government's Relief Plan granted by the Ministry of Peace and Reconstruction.[11]

2.23 On 18 October 2006, the author and her father-in-law filed a first information report with Kavre District Police Office to initiate an investigation into the perpetrators identified by the Commission. However, Kavre District Police Office flatly refused to register the report, saying that they could not register it and arrest the perpetrators unless an order came from a higher authority. They advised the family to take the case to the Police Headquarters.

2.24 As an alternative recourse, the author and her father-in-law submitted a petition before the Chief District Officer of Kavre on 18 October 2006. He registered the petition and commanded Kavre District Police Office to register the report and commence the investigation. On 1 November 2006, the family went to Kavre District Police Office to follow up, but the latter refused to register the report. Kavre District Police Office said that the perpetrators were more senior, and hence it could not register the case or arrest them.

[7] The decision of the Commission is available on file.

[8] The decision of the Commission was communicated to the family by letter dated 28 January 2009, a copy of it is on file.

[9] Equivalent to approximately $3,400.

[10] The amount is equivalent to approximately $3,700. In 2010, the author received Nrs 100,000 and a further Nrs 200,000 in 2011. In addition, she received Nrs 25,000 as a single woman's allowance in 2010.

[11] The Government provided some interim measures in the form of payments for interim relief to victims of certain categories of crimes, including enforced disappearances during the period of conflict. These have been implemented through the Standards for Economic Assistance and Relief for Conflict Victims (2008) adopted by the Council of Ministers and further developed through policy documents.

2.25 On 8 November 2006, the family filed a writ petition before the Supreme Court demanding a mandamus order for Kavre District Police Office to register the report. On 5 December 2006, in a written response, Kavre District Police Office informed the Court that it had registered the report on 7 November 2006 on the basis of a homicide having been committed and, as such, the investigation had already begun. Subsequently, the family and the lawyers made regular follow-up visits to Kavre District Police Office. When asked about progress in the case, Kavre District Police Office would refer to certain correspondence with criminal justice authorities noting that they remained unanswered. That included a letter Kavre District Police Office said it had sent to Police Headquarters and the Zonal Police Office on 8 December 2006, asking the Office for an order in the name of the perpetrators.

2.26 On 17 June 2008, the District Attorney's Office wrote to Kavre District Police Office instructing it to immediately arrest the perpetrators identified in the report and proceed with the necessary actions. Kavre District Police Office failed to act upon those instructions.

2.27 On 9 November 2009, and after repeated postponement of the hearings, the Supreme Court quashed the petition on the basis that the report had been registered, despite the fact that Kavre District Police Office had not submitted to the Court a case file describing the developments of the case as requested by the Court.

2.28 Since then, and despite various efforts by the family to urge Kavre District Police Office to arrest the perpetrators and take the necessary actions, no developments in the case have been reported. Their latest visit to Kavre District Police Office was on 24 September 2014, when the Police informed the author and her lawyer that they had not worked on the case since 20 October 2013. The Police officer at Kavre District Police Office told the author that the case would need to be dealt with by the Truth and Reconciliation Commission, hence the Police would not do anything further on it.

2.29 The family has been undergoing severe challenges and difficulties after the disappearance and subsequent killing of Mr. Bolakhe, who was the family's sole breadwinner. The author has faced extreme economic hardship and adversity to feed and educate her children. Her son was forced to discontinue his studies and go to work. The family has suffered mental anguish and continuing psychological damage.

The complaint

3.1 The author claims that the two separate arrests and detentions of Mr. Bolakhe, on 1 May 2001 until 14 July 2002 (until the family established his whereabouts and fate) and on 27 December 2003 (until his whereabouts and fate became known), amount to enforced disappearance, constituting by itself, and in conjunction with the facts outlined below, a violation of his rights under articles 6, 7, 9, 10 (1) and 16.[12]

3.2 The author submits that Mr. Bolakhe was extrajudicially executed during an Army patrol. The evidence, supported by two witnesses, is inconsistent with Mr. Bolakhe's death having occurred during crossfire. Both R.P. and T.T. heard the shooting coming from one direction and from one type of gun. This was supported by the findings of the Commission and the evidence of B.T. himself to the Commission, who had stated that there had been no crossfire incident during that time. The author also submits that there is no possible argument that Mr. Bolakhe's execution was the result of the use of reasonable force and self-defence, and was not subjected to any judicial process.[13] No investigation into his death was carried out at the time and his body was buried in secret. The author submits that this amounts to a violation by the State party of article 6 of the Covenant.

3.3 The author argues that her husband was subjected to violations of articles 7 and 10 in a number of ways during his two periods of detention. The author considers that his

[12] The author refers to *El Hassy v. Libyan Arab Jamahiriya* (CCPR/C/91/D/1422/2005); *Kimouche et al. v. Algeria* (CCPR/C/90/D/1328/2004); and *Celis Laureano v. Peru* (CCPR/C/56/D/540/1993).

[13] The author refers to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1990).

incommunicado detention on both occasions amounted in itself to a violation of article 7.[14] She also claims that her husband was subjected to acts of torture and cruel, inhuman or degrading treatment as supported by a witness' testimony indicating that Mr. Bolakhe had told him that he had been severely beaten during interrogations. The author also contends that the overall conditions of detention at Gorakhnath Battalion Army camp (December 2002 to February 2003) amounted to cruel, inhuman and degrading treatment.[15] She argues that subjecting Mr. Bolakhe, before he was shot, to a four-day "search mission" amounted to ill-treatment in violation of articles 7 and 10. He was forced to walk long distances while in pain from the beatings that had been inflicted on him during interrogation, to carry heavy baggage and weapons and to witness soldiers beating other villagers, and had an unexploded bomb thrown in front of him.

3.4 The author claims that her husband was arrested on both occasions without a warrant and was never informed of the reasons for his arrest or the charges against him. He was held incommunicado without any opportunity to consult a lawyer or to contact friends or family, or to be brought before a judge. He could not challenge the lawfulness of his detention on his initiative. The Commission confirmed the illegality of the arrest and detention of Mr. Bolakhe. In the light of the above, the author argues that Mr. Bolakhe was arbitrarily deprived of his liberty in violation of article 9,[16] and that the State failed to provide compensation to his family in line with article 9 (5).

3.5 The author alleges that her husband was denied recognition as a person before the law on two separate occasions. First, when he was arrested on 1 May 2001 and denied access to the outside world until his family was able to ascertain his whereabouts on 14 July 2002, when he was transferred to a State prison. Second, on 27 December 2003, when State security forces abducted him and detained him until he was killed on 16 February 2004. Though his family persistently inquired at various institutions regarding his whereabouts, the State systematically denied having information regarding his detention. Even the writ petition of habeas corpus was quashed by the Supreme Court on the basis that the Malego Committee's report maintained that Mr. Bolakhe had been released from detention. By producing false reports on Mr. Bolakhe's detention, the State systematically misled the author and her family, and removed him from the protection of the law and other legal entitlements under the Covenant for a protracted period of time, which means he was denied recognition as a person. To this day, the Army has refused to provide any information regarding the detention or death of Mr. Bolakhe. The author therefore claims that the State party has violated article 16 of the Covenant.

3.6 The author submits that the State party's systematic refusal to investigate Mr. Bolakhe's disappearance and extrajudicial execution has ensured that no effective remedy has ever been provided for the aforementioned violations. As such, the State party has violated article 2 (3) of the Covenant.

3.7 The author argues that her and her family's right to privacy under article 17 was violated by the Army's illegal search without a warrant of her house on 20 December 2003. The author noted that the Army had searched the entire home and threatened her and members of her family who were present. The author referred to the Committee's jurisprudence indicating that such arbitrary invasions of privacy and home violated article 17.[17] The author stressed that entering homes with force along with physical and verbal abuse of the occupants had a significant impact upon the family life of those concerned.

[14] The author refers to *Bousroual v. Algeria* (CCPR/C/86/D/992/2001); and *Grioua v. Algeria* (CCPR/C/90/D/1327/2004).

[15] The author refers to the United Nations Standard Minimum Rules for the Treatment of Prisoners (1995) and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

[16] The author refers to *Sharma v. Nepal* (CCPR/C/94/D/1469/2006); and *Sarma v. Sri Lanka* (CCPR/C/78/D/950/2000).

[17] The author refers to *Rojas García v. Colombia* (CCPR/C/71/D/687/1996); *Coronel et al. v. Colombia* (CCPR/C/76/D/778/1997); and Human Rights Committee, general comment No. 16 (1988) on the right to privacy.

3.8 The author contends that she, her children and parents-in-law have experienced severe pain and suffering since the disappearance of her husband and the State's refusal to provide information. They could not establish his whereabouts until the Commission's investigation revealed that her husband had been killed. Mr. Bolakhe's family faces continuing uncertainty about why he was killed and by whom, because of the failure of the Police to investigate.[18] His death had a negative financial and mental impact on the family and hampered the children's education and other general needs of the family, especially given that he was the sole breadwinner. The author notes that the "interim relief" received by the author has been made available to all victims of enforced disappearance and cannot substitute for the effective remedy required by the Covenant. It is a temporary measure intended to support families until proper compensation is provided. The author submits that the State party violated article 7, read alone and in conjunction with article 2 (3) of the Covenant in respect of the author and the family members on whose behalf she submits the current communication.

3.9 Regarding the exhaustion of available domestic remedies, the author indicated that she and her family made several attempts to locate her husband, including by visiting the Kavre District Police Office, other detention centres and jails, as well as the District Administration Office. They also appealed to the Ministry of Home Affairs and the Commission and to national and international non-governmental organizations. They filed two petitions at the Supreme Court; a habeas corpus petition, and a writ for a mandamus order for the Police to register the first information report and initiate the investigation. Both petitions were quashed by the Supreme Court, which is the court of last resort in the Nepalese judicial system.

3.10 Alternatively, the author submits that she is not expected to exhaust all domestic remedies in situations in which the State has an ex officio obligation to investigate and prosecute crimes of which it is aware and in which there is an unreasonably long delay in doing so.[19] She claims that the State party did not meet its obligation to promptly, thoroughly and effectively investigate the allegations of violations through independent and impartial bodies. There has been little correspondence by criminal justice authorities in relation to the case. The author concludes that the interlude of almost 11 years since the violations were brought to the State party's attention constitutes an unreasonably long delay in pursuing the investigation.[20]

3.11 The author claims that available remedies are neither effective nor available in relation to the violations suffered.[21] Although the Interim Constitution acknowledges torture as a crime, domestic legislation fails to criminalize it and thus does not set the necessary grounds for the State to provide the appropriate remedy.[22] Referring to the jurisprudence of the Committee, the author notes that the remedy provided by the Compensation for Torture Act, 2053 (1996), which only provides for the possibility of suing for limited damages and pursing administrative sanctions against perpetrators, is not an effective remedy.[23]

3.12 The author submits that, even for crimes that do exist under Nepalese law, immunities for military officials are a bar to prosecutions.[24] In addition, the culture of impunity in Nepal shows that domestic remedies are ineffective.[25]

3.13 The author argues that the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2071 (2014) is incompatible with international human

[18] The author refers to *Quinteros v. Uruguay* (CCPR/C/19/D/107/1981); and *Giri v. Nepal* (CCPR/C/101/D/1761/2008).

[19] The author refers to *Giri v. Nepal*, para. 6.3.

[20] Ibid.

[21] The author refers to *Marcellana and Gumanoy v. the Philippines* (CCPR/C/94/D/1560/2007), para. 6.3.

[22] The author refers to *Maharjan et al. v. Nepal* (CCPR/C/105/D/1863/2009), para. 7.5.

[23] Ibid., para 7.6.

[24] The author refers to immunity provisions that protect State officials and allow them to evade criminal accountability for the crimes they committed, specifically Army Act, 2063 (2006), sect. 22; the Police Act, 2012 (1955), sect. 37; and the Public Security Act, 2046 (1989), sect. 22.

[25] The author refers to Advocacy Forum-Nepal and REDRESS, *Held to Account* (December 2011).

rights standards. The Act does not provide an effective judicial remedy, as it diverts all cases of serious violations of human rights committed during the conflict to transitional justice mechanisms, namely the Truth and Reconciliation Commission and the Commission of Investigation on Enforced Disappeared Persons. The Act gives wide discretion to authorities as to whether to undertake an effective criminal investigation and prosecution. Furthermore, the author notes that the Commissions have the power to recommend amnesties for gross violations of human rights. Referring to the Committee's jurisprudence, the author argues that those transitional mechanisms do not amount to an effective judicial remedy and do not need to be exhausted.[26]

3.14 The author requests the Committee to recommend to the State party that it should: (a) initiate without delay a full and effective criminal investigation by an autonomous and independent criminal investigation body into the allegations leading to the prosecution and punishment of all those responsible — both the persons who carried out the acts and those who directed or otherwise authorized or acquiesced with the actions; (b) provide comprehensive measures to protect the author, her family members and other witnesses against potential threats and reprisals while conducting the investigation; (c) provide the family with adequate and effective reparation; (d) ensure that reparation covers financial compensation for all pecuniary and non-pecuniary losses, including compensation for loss of income and educational opportunity, the cost of the children's education up to tertiary level, expenses of the search for Mr. Bolakhe and the costs of pursing justice, the costs of psychological treatment and damages for emotional distress; (e) ensure that these measures include access to rehabilitation services for the author, her children and her parents-in-law; (f) provide the full file from the Commission's investigation. In particular, the author requested an official apology for the family from the Prime Minister, a senior member of the Ministry of Defence and a senior member of the Ministry of Justice. The author also requested general measures to reform laws and institutions to ensure sufficient safeguards to avoid the recurrence of similar violations in the future, including: criminalization of torture and enforced disappearances; removal of immunities from the Army and Police officers responsible for serious human rights violations; reform of the system of registration of a first information report and investigation and prosecution of serious international crimes alleged against State actors; repeal or amendment of the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act to ensure that investigations can also proceed in the domestic justice system for crimes under international law; and reform of the Army to ensure accountability, adherence to court decisions and implementation of a system of vetting of Army and Police officials.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 2 May 2016, the State party submitted its observations on admissibility and the merits of the communication.

4.2 As regards admissibility, the State party contends that the author has not exhausted all domestic remedies. The State party submits that Kavre District Police Office registered the first information report in relation to the death of Mr. Bolakhe, submitted by his father on the basis of culpable homicide on 24 October 2006,[27] and that the case is still under investigation.

4.3 The State party notes that the whereabouts of Mr. Bolakhe have already been identified and that the body was handed over to his family for final rites. The State party further noted that the case occurred during the time of armed conflict in Nepal. The Commission of Investigation on Enforced Disappeared Persons and the Truth and Reconciliation Commission were constituted by the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act (2014) to address violations of human rights committed by State and non-State actors during the period of conflict. On 18 May 2016, the two Commissions separately issued public notices to lodge complaints, within a period of

[26] The author refers to *Sharma v. Nepal*; *Giri v. Nepal*; and *Chaulagain v. Nepal* (CCPR/C/112/D/2018/2010).

[27] In the communication, the author notes that Kavre District Police Office informed the Supreme Court that it had registered a first information report on 7 November 2006.

two months, regarding the enforced disappearances and human rights violations committed during the armed conflict.

4.4 The State party claimed that the two Commissions had adequate mandates and competency to conduct impartial and independent investigations into human rights violations and crimes against humanity. On the basis of an investigation, the Commissions have the power to: (a) recommend prosecuting the perpetrators of serious human rights violations; (b) recommend making reparations to the victims; (c) conciliate between the victim and the perpetrators; and (d) recommend amnesties in cases in which sufficient grounds exist as set forth in the Act.

4.5 The State party submits that the rules of the Commissions, which were approved by the Council of Ministers in accordance with the Supreme Court's ruling of 26 February 2015, provide stronger measures for effective implementation of the transitional mechanisms. According to these rules, reconciliation or recommendations for amnesty can only be made with the prior consent of the victim. The Commissions are also empowered to forward cases directly to the Office of the Attorney General with a view to prosecuting those involved in serious violations of human rights.

4.6 The State party argues that the allegations made by the author would fall under the jurisdiction of the Truth and Reconciliation Commission, and that the author did not register the complaint regarding the death of Mr. Bolakhe with that Commission.

4.7 The State party claims that the author cannot obtain full justice or a remedy from only the regular criminal justice mechanisms; it argues that she should have registered the complaint regarding the death of her husband with the Truth and Reconciliation Commission. On the basis of a duly completed investigation of the case and further to a recommendation of the Commission, the Government takes legal action against those involved in an offence. The State party therefore alleges that the author has not exhausted the effective and accessible domestic remedies available and therefore the complaint is not admissible.

4.8 Regarding the merits, the State party notes that the Army stated that there was no record of the arrest and detention of Mr. Bolakhe at Dhulikhel barracks. The State party recalled the autopsy and forensic investigation, which confirmed that he had died as a result of gunfire injuries in the pelvis and that they were "SG (grain) size lead pellets of 12 bore shotgun cartridge and a wad (plastic cup) of 12 bore shotgun carriage". The State party contends that the Nepalese Army has never used such arms so it can be concluded that Mr. Bolakhe was not killed by the gun of an Army officer.

4.9 The State party notes that it has already provided the sum of Nrs 500,000 to the author as "interim relief" under the guidelines and standards adopted to provide such relief and other benefits to victims and survivors of the conflict. The State party further notes that the author would be entitled to the benefits and reparation provided under section 23 of the Act.

Author's comments on the State party's observations on admissibility and the merits

5.1 On 25 August 2016, the author submitted her comments on the State party's observations on admissibility and merits.

5.2 With regard to the exhaustion of domestic remedies, the author argues that she and her family have availed themselves of every possible remedy and that those remedies have been exhausted. The author reiterates that the Committee has repeatedly stressed that the newly established transitional justice mechanisms referred to by the State party are not an effective judicial remedy, as required in cases of violations as serious as those alleged in the communication.

5.3 The author argues that the Act is deeply flawed and is incompatible with the Covenant. She notes that, since the submission of the communication on 26 February 2015, the Supreme Court has declared the Act to be unconstitutional and ordered the Government to amend or repeal certain of its provisions. The Supreme Court held that the provisions of the Act that serve to compromise the central role of the courts in delivering justice are invalid, including the power to grant amnesties, powers to divert such cases away from the

Court or to otherwise interfere in such cases.[28] The author claimed that the necessary amendments to the Act had not been introduced to implement the Court's judgment.[29] Concerning the State party's reference to the rules introduced for the Commissions, the author notes that they do not transform the Commissions into a judicial remedy. The author further argues that the Act will always take precedence over the rules.

5.4 The author reiterates that, even if the Truth and Reconciliation Commission did provide an effective remedy, it would be unreasonably delayed and would not form a bar to admissibility.

5.5 The author recalls that the interim relief she received is provisional and not a bar to admissibility; it does not amount to adequate reparation for violations as serious as those alleged in the present case.

5.6 Concerning the merits, the author argued that the absence of a record of the arrest and detention of her husband as set out in the State party's report does not disapprove the allegation that Mr. Bolakhe was arrested on 27 December 2003 and subsequently detained. It is widely documented that during the conflict in Nepal, the Army and the Police regularly failed to follow safeguards for arrest and detention, including, in particular, the maintenance of custody records.[30]

5.7 The author adds that there is extensive witness and circumstantial evidence attesting to the fact that Mr. Bolakhe was arrested and kept under the control of the Army and the Police. The evidence was strong enough for the Commission to make a formal finding that he was arrested on 27 December 2003 and detained incommunicado at Satru Mardan Army barracks, before being transferred to the Army barracks at Panauti in February 2014. The Commission also identified the perpetrators. The author further submits that the witness evidence in the present case, including that referred to in the Commission's decision, is entirely consistent with that of the Police and Army at the time.

5.8 With regard to the State party's argument that, according to the autopsy, the type of bullets found with Mr Bolakhe's remains were from a 12-bore shotgun, and that the Army did not use such a gun, the author contends that this does not disapprove that the Army or the Police were responsible for the killing. She adds that there is insurmountable evidence, corroborated by the subsequent discovery of his remains, witness evidence and findings of the Commission that he was shot by the Army or the Police during a joint operation. The author submits that, although it may be true that 12-bore shotguns were not official Army-issued weapons during the conflict, the Police, which was also part of the joint operation in which Mr. Bolakhe was killed, did use this type of weapon during the conflict. Soldiers from the Army also had easy access to such weapons, as Maoists used 12-bore shotguns. Maoist weapons were regularly seized by the Army and it is public knowledge that soldiers had access to them.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

[28] The author submitted an extract of the Supreme Court's Order 070-WS-0050 of 26 February 2015.

[29] In this regard, the author cited the position of OHCHR clarifying that the Act fails to comply with the international legal obligations of Nepal and is inconsistent with the United Nations policy on amnesties. See OHCHR, "Nepal: OHCHR position on UN support to the Commission on Investigation of Disappeared Persons and the Truth and Reconciliation Commission" (16 February 2006), para. 6.

[30] The author made a reference to E/CN.4/2006/6/Add.5, para. 20.

6.3 The Committee notes the argument of the State party that the Kavre District Police Office registered a first information report in relation to the death of Mr. Bolakhe and that the case is under investigation. The Committee also notes the State party's allegation that the author has not exhausted domestic remedies, since Mr. Bolakhe's case should be addressed by the transitional justice mechanism created under the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act of 2014.

6.4 The Committee observes the steps taken by the author and her family in trying to locate Mr. Bolakhe. After his arrest on 27 December 2003, the author and her family visited various locations, including Kavre District Police Office, jails, barracks and the District Administration Office to establish his whereabouts. They also appealed to the Ministry of Home Affairs. Despite all these attempts, the author received no information from the State party regarding the whereabouts of her husband. The Committee also notes that a habeas corpus petition was filed in the Supreme Court soon after the author's husband disappeared but this was dismissed. The Committee further notes that, following this, a complaint was lodged with the Commission, who investigated the case and found that Mr. Bolakhe was unlawfully killed by State forces and recommended prosecution of named individuals. The Committee observes that, after the final exhumation of the remains of Mr. Bolakhe, the author and her father-in-law attempted to file a first information report on 18 October 2006, but Kavre District Police Office refused to register it. Subsequently, they submitted a petition to the Chief District Officer of Kavre requesting an investigation. The Chief District Officer ordered Kavre District Police Office to register the case, but the latter failed to comply. Consequently, the family filed a petition with the Supreme Court demanding an order of mandamus against Kavre District Police Office, which informed the Court that a first information report had already been registered on 7 November 2006, urging the Court to squash the petition. The Committee observes that, since the registration of the first information report, the Police's action on this case consists solely of sending correspondence to higher Police authorities and another district Police office requesting relevant individuals to present themselves for questioning. The legal proceedings have been drawn out and no real investigation has been undertaken.

6.5 The Committee recalls its jurisprudence according to which a judicial remedy is required in cases of serious violations.[31] In this respect, the Committee observes that the transitional justice bodies established by the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act of 2014 are not judicial organs capable of affording a judicial remedy.[32] Accordingly, the Committee considers that the remedies identified by the State party have been ineffective and that there are no obstacles to the examination of the communication under article 5 (2) (b) of the Optional Protocol.

6.6 As all admissibility requirements have been met, the Committee declares the communication admissible and proceeds to its examination of the merits.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee takes note of the author's allegation that the arrest and detention of Mr. Bolakhe from 1 May 2001 until 14 July 2002, when his family established his whereabouts, amounted to enforced disappearance. It further notes that the State party did not challenge these allegations. The Committee observes that the 2014 Malego Committee's report, which made public the whereabouts of 126 involuntarily disappeared persons, contained Mr. Bolakhe's name among those and confirmed that he had been released on 20 April 2003.

[31] See *Giri v. Nepal*, para. 6.3; *Chaulagain v. Nepal* (CCPR/C/112/D/2018/2010), para. 6.3; *Neupane and Neupane v. Nepal* (CCPR/C/120/D/2170/2012), para. 9.3; and *Tharu et al. v. Nepal* (CCPR/C/114/D/2038/2011), para. 9.3.

[32] See *Chaulagain v. Nepal*, para. 6.3; *Tharu et al. v. Nepal*, para. 9.3; *Basnet v. Nepal* **(**CCPR/C/117/D/2164/2012), para. 9.3; *Nakarmi and Nakarmi v. Nepal* (CCPR/C/119/D/2184/2012), para. 10.3; and *Dhakal et al. v. Nepal* (CCPR/C/119/D/2185/2012), para. 10.3.

7.3 The Committee notes the author's argument that her husband was subjected to an enforced disappearance after he was arrested again on 27 December 2003. The Committee takes note of the State party's argument that there is no record of Mr. Bolakhe's arrest or detention.

7.4 The Committee notes that it has dealt with numerous cases in respect of similar practices in a number of earlier communications, some of them involving the State party.[33] In line with these precedents, the Committee reiterates its position that the burden of proof cannot rest solely with the author of the communication, especially considering that the author and the State party do not always have equal access to evidence and that, frequently, the State party alone has access to the relevant information. It is implicit in article 4 (2) of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives, and to provide the Committee with the information available to it. In cases in which the author has submitted allegations to the State party that are corroborated by credible evidence and in which further clarification depends on information that is solely in the hands of the State party, the Committee may consider the author's allegations substantiated, in the absence of satisfactory evidence or explanations to the contrary presented by the State party.

7.5 In the present case, the Committee notes the author's claim that her husband was arrested on 27 December 2003 without a warrant as supported by two testimonies. She further argued that he was held incommunicado in two different locations. The Committee observes that, despite the efforts made by the author and her family to locate Mr. Bolakhe, his whereabouts and fate remained unknown until the investigation of the Commission led to the identification of a burial site where his remains were exhumed more than two and a half years after his disappearance. The Committee observes that the authorities have denied their involvement in Mr. Bolakhe's deprivation of liberty, and have persistently refused to disclose his fate or whereabouts, including in the context of habeas corpus, which led the Supreme Court to dismiss the case petition. The Committee also takes note of the Commission decision concluding that Mr. Bolakhe was arrested on 27 December 2003, and was detained incommunicado by the authorities.

7.6 In the light of the documentation submitted by the author, the Committee considers that the State party has not provided a sufficient and concrete explanation to refute the author's allegations regarding her husband's enforced disappearances, either during the period from 1 May 2001 until 14 July 2002, or during the period from 27 December 2003 until 5 July 2006. The Committee, therefore, considers that Mr. Bolakhe's deprivation of liberty, followed by the authorities' refusal to acknowledge it and conceal his fate, during both periods, constitutes an enforced disappearance.

7.7 The Committee recalls that, while the Covenant does not explicitly use the term "enforced disappearance" in any of its articles, enforced disappearance constitutes a unique and integrated series of acts that represent continuing violations of various rights recognized in the treaty.[34]

7.8 The Committee recalls that, in cases of enforced disappearance, deprivation of liberty followed by a refusal to acknowledge the deprivation of liberty, or by concealment of the fate of the disappeared person, removes the person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable.[35] In the

[33] See *Sharma v. Nepal*, para. 7.5; *Sharma et al. v. Nepal* (CCPR/C/122/D/2364/2014); *Chaulagain v. Nepal*; *Tharu et al. v. Nepal*; *Basnet v. Nepal*; *Nakarmi and Nakarmi v. Nepal*; *Dhakal et al. v. Nepal*; *Maya v. Nepal* (CCPR/C/119/D/2245/2013); *A.S. v. Nepal* (CCPR/C/115/D/2077/2011); *Sharma v. Nepal* (CCPR/C/94/D/1469/2006); *Sedhai et al. v. Nepal* (CCPR/C/108/D/1865/2009); *Maharjan et al. v. Nepal* (CCPR/C/105/D/1863/2009); *Tripathi and Tripathi v. Nepal* (CCPR/C/112/D/2111/2011); and *Katwal v. Nepal* (CCPR/C/113/D/2000/2010).

[34] See *Neupane and Neupane v. Nepal*, para. 10.5; *Katwal v. Nepal***,** para. 11.3; *Serna et al. v. Colombia* (CCPR/C/114/D/2134/2012), para. 9.4; *Nakarmi and Nakarmi v. Nepal*, para. 11.5; and *Dhakal et al. v. Nepal*, para. 11.5.

[35] See *Abushaala et al. v. Libya* (CCPR/C/107/D/1913/2009), para. 6.2; *Basnet v. Nepal*, para. 10.5; *Nakarmi and Nakarmi v. Nepal*, para. 11.6; and *Dhakal et al. v. Nepal*, para. 11.6.

present case, the State party has produced no evidence to show that it met its obligations to protect the life of Mr. Bolakhe when he was in the authorities' custody.

7.9 The Committee notes the author's allegation that Mr. Bolakhe was executed extrajudicially during an Army patrol. Two witnesses heard the shooting at the time coming from one direction and from one type of gun the day Mr. Bolakhe was killed. The Committee observes that this was supported by the findings of the Commission and other evidence of B.T. himself to the Commission, stating that there had been no crossfire incident during that time. The Committee takes note of the author's argument that Mr. Bolakhe's execution was not compatible with a possible argument of use of reasonable force or self-defence and was not subjected to a judicial process. The Committee takes note of the findings of the Commission in this case stating that the security forces did not follow legal process for the death of a person in their custody, and concealed the incident, making the whereabouts of the person unknown.

7.10 The Committee takes note of the State party's claim that the Army does not use the type of gun the bullets of which were found during the autopsy in Mr. Bolakhe's remains. The Committee also notes the author's claim that this does not disprove the responsibility of the Army and the Police for the killing. She adds that there is insurmountable evidence that her husband was shot by the Army or the Police on a joint operation. This evidence is corroborated by the finding of Mr. Bolakhe's remains in the spot referred to in the witness evidence, and corresponds with the findings of the Commission. The Committee observes that the Commission named responsible individuals from the Police and Army, and called on the Government to hold them accountable and to provide the author's family with compensation.

7.11 The Committee further recalls that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces.[36] The Committee also recalls that, under article 2 (3) of the Covenant, States parties must ensure that all persons have accessible, effective and enforceable remedies in order to claim the rights enshrined in the Covenant. The Committee further recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, particularly the fact that, when investigations reveal violations of certain Covenant rights, States parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. Those obligations arise notably in respect of violations recognized as criminal under either domestic or international law, such as torture and similar cruel, inhuman and degrading treatment, and summary and arbitrary killing (para. 18).

7.12 The Committee takes note of the writ petition before the Supreme Court demanding a mandamus order for Kavre District Police Office to register the first information report, which was quashed. The Committee also notes the State party's argument that Kavre District Police Office registered the report under culpable homicide in 2006, and that the case is still under investigation. The Committee also takes note of the State party's argument that the author should register the complaint regarding the death of her husband with the Truth and Reconciliation Commission, and that the Government would take legal action against those involved in the offence, in accordance with the recommendations of this Commission.

7.13 Despite the efforts made by the author and her family, no investigation has been concluded by the State party in order to elucidate the circumstances surrounding the arrest and death of Mr. Bolakhe and no perpetrator has been tried and punished, although the Commission has identified three of them. The State party refers to ongoing investigations, but the status of such investigations and the reasons for their delay remain unclear.

7.14 Accordingly, the Committee considers that the State party has failed to conduct a prompt, thorough and effective investigation into the circumstances of the arrest, detention and killing of the author's husband, in violation of article 6, read alone and in conjunction with article 2 (3) of the Covenant.

[36] See the Committee's general comment No. 6 (1982) on the right to life, para. 3.

7.15 The Committee notes the author's argument that her husband's arbitrary detention and his subsequent enforced disappearance on both occasions amount per se to treatment contrary to article 7. The Committee recognizes the degree of suffering involved in being held indefinitely without contact with the outside world. In addition, the Committee takes note of the testimony of R.P. to whom Mr. Bolakhe said that he had been severely beaten during interrogation. The Committee takes notes of the author's allegations that the overall conditions of detention at Gorakhnath Battalion Army camp (December 2002 to February 2003) amounted to cruel, inhuman and degrading treatment. The Committee notes the author's claim that subjecting Mr. Bolakhe, before he was shot, to a four-day "search mission" in the health condition he was in, among others, amounted itself to a form of ill-treatment under article 7. As the State party denies the arrest and does not provide any evidence to clarify the facts regarding Mr. Bolakhe's treatment in detention, the Committee finds that his enforced disappearance and his treatment while in detention constitute a violation of article 7 of the Covenant. Having reached that conclusion, the Committee will not examine the claims regarding the violation of article 10 (1) of the Covenant for the same facts.

7.16 The Committee notes the anguish and distress caused to the author and her family by the disappearance and extrajudicial killing of Mr. Bolakhe; the continuing uncertainty about the circumstances that led to his death; that no investigation has been carried out; and that no one has been convicted. In this regard, the Committee considers that these facts reveal a violation of article 7 of the Covenant with respect to the author and the family members on whose behalf she filed the present communication.

7.17 The Committee takes note of the author's allegation under article 9 of the Covenant that her husband was deprived of his liberty on two occasions. No arrest warrants were presented at the time of his arrest. No legal grounds were provided for his detention. He was never brought before a judge, and could not challenge the legality of his detention. The Committee also takes notes of the findings of the Commission underlining the illegality of the arrest and detention of Mr. Bolakhe when this occurred on the second occasion. In the absence of a response from the State party in this regard, the Committee considers that the detention of Mr. Bolakhe constitutes a violation of his rights under article 9 of the Covenant.

7.18 With regard to the alleged violation of article 16, the Committee notes the author's allegation that, despite the fact that her husband was arrested and detained incommunicado by security forces on two occasions, the authorities systematically denied involvement in his enforced disappearance, including during the habeas corpus process before the Supreme Court. The State party failed to provide relevant information concerning Mr. Bolakhe's fate and later the circumstances that led to his death. No effective investigation was carried out to ascertain his whereabouts before his remains were exhumed, effectively placing him outside the protection of the law. The Committee is of the view that the intentional removal of a person from the protection of the law constitutes a refusal of the right to recognition as a person before the law, in particular if the efforts of his or her relatives to obtain access to effective remedies have been systematically impeded.[37] The Committee, therefore, finds that the enforced disappearance of Mr. Bolakhe deprived him of the protection of the law and of his right to recognition as a person before the law, in violation of article 16 of the Covenant.

7.19 With regard to the author's allegation under article 17, the Committee must first determine whether the specific circumstances of the search of the Bolakhe's family's house constitute a violation of article 17 of the Covenant. According to the author, the search was carried out without a warrant and the Army scolded the author and her children, who were present. The State party, on the other hand, did not provide any explanation in this regard to justify the Army's actions. Consequently, the Committee concludes that there has been a violation of article 17 (1), insofar as there was unlawful interference in the home of the author and her family members who were present.[38]

[37] See *Basnet v. Nepal*, para. 10.9; *Tharu et al. v. Nepal*, para. 10.9; and *Serna et al. v. Colombia*, para. 9.5; *Nakarmi and Nakarmi v. Nepal*, para. 11.10; and *Dhakal et al. v. Nepal*, para. 11.10.

[38] See *Rojas García v. Colombia*, para. 10.3; *Coronel v. Colombia*, para. 9.7; and general comment No. 16.

7.20 The author invokes article 2 (3) of the Covenant, which imposes on States parties the obligation to ensure an effective remedy for all persons whose rights under the Covenant have been violated. The Committee attaches importance to the establishment by States parties of appropriate judicial and administrative mechanisms for addressing claims of rights violations. It refers to its general comment No. 31, which provides, inter alia, that failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. In the present case, the Committee notes that the author and her family, immediately after Mr. Bolakhe's arrest, visited Kavre District Police Office and other detention facilities to gather information about his detention. They also filed a writ of habeas corpus petition. Despite these efforts, the State party has not undertaken an independent and thorough investigation to elucidate the circumstances surrounding Mr. Bolakhe's arrest, detention and killing. In this regard, the Committee considers that the State party has failed to conduct a prompt, thorough and effective investigation into the disappearance and death of Mr. Bolakhe. Additionally, the sum received by the author as interim relief does not constitute an adequate remedy commensurate with the serious violations committed. Accordingly, the Committee concludes that the facts before it reveal a violation of article 2 (3), in conjunction with articles 6, 7, 9, 16 and 17 of the Covenant with regard to Mr. Bolakhe; and article 2 (3), read in conjunction with article 7, of the Covenant with respect to the author, her children and parents-in-law.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses violations by the State party of articles 6, 7, 9, 16 and 17 read alone and in conjunction with article 2 (3) of the Covenant with regard to Mr. Bolakhe, and a violation of article 7 read alone and in conjunction with article 2 (3), with respect to the author, her children and parents-in-law.

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author and her children and parents-in-law with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated to, inter alia: (a) conduct a thorough and effective investigation into the facts surrounding the detention of Mr. Bolakhe and the treatment he suffered during detention and killing; (b) provide the author and her family with detailed information about the results of its investigation; (c) prosecute, try and punish those responsible for the violations committed and make the results of such measures public; (d) ensure that any necessary and adequate psychological rehabilitation and medical treatment are made available to the author and her family; and (e) provide effective reparation, including compensation and appropriate measures of satisfaction, to the author and her children and parents-in-law for the violations suffered. The State party is also under an obligation to take steps to prevent the occurrence of similar violations in the future. In particular, the State party should ensure that its legislation (a) criminalize torture and enforced disappearance and provide for appropriate sanctions and remedies commensurate with the gravity of the crimes; (b) guarantee that such cases give rise to a prompt, impartial and effective investigation; and (c) allow for criminal prosecution of those responsible for such crimes.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official language of the State party.